

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

HONORIO BAUTISTA,
Plaintiff,

v.

C. KOENIG,
Defendant.

Case No. [20-cv-01893-LB](#)

ORDER TO SHOW CAUSE

Re: ECF No. 1

INTRODUCTION

Honorio Bautista, an inmate at the Correctional Training Facility in Soledad, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He consented to proceed before a magistrate judge. (ECF No. 4.)¹ His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. This order requires the respondent to respond to the petition.

STATEMENT

Mr. Bautista provides the following information in his habeas petition and attachments thereto. He entered a plea of nolo contendere and was convicted in the Contra Costa County Superior

¹ Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 Court of oral copulation or sexual penetration with a child 10 years old or younger, *see* Cal. Penal
2 Code § 288.7(b). On March 28, 2019, he was sentenced to 15 years to life in prison. Although he
3 did not appeal his conviction, he filed several unsuccessful habeas petitions in state court. He then
4 filed this action.

5 ANALYSIS

6 This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody
7 pursuant to the judgment of a State court only on the ground that he is in custody in violation of
8 the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A district court
9 considering an application for a writ of habeas corpus shall “award the writ or issue an order
10 directing the respondent to show cause why the writ should not be granted, unless it appears from
11 the application that the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

12 The federal petition for writ of habeas corpus alleges that Mr. Bautista received ineffective
13 assistance of counsel. Counsel allegedly was ineffective in that he (a) failed to inform the court
14 that Mr. Bautista wanted to discharge counsel and hire new counsel due to the first counsel’s
15 ineffective representation or conflict of interest; (b) gave Mr. Bautista inadequate advice that led
16 to the acceptance of a coerced plea offer; and (c) failed to file a timely notice of appeal to
17 withdraw the involuntary plea. Liberally construed, these claims are cognizable in a federal habeas
18 action and warrant a response.

19 CONCLUSION

20 For the foregoing reasons,

- 21 1. The petition warrants a response.
- 22 2. The clerk shall serve by mail a copy of this order and the petition upon the respondent and
23 the respondent's attorney, the Attorney General of the State of California. The clerk shall also
24 serve a copy of this order on the petitioner.
- 25 3. The clerk shall electronically serve a copy of this order upon the respondent and the
26 respondent’s attorney, the Attorney General of the State of California, at the following email
27 address: SFAWTParalegals@doj.ca.gov. The petition and any exhibits thereto are available via the
28

1 Electronic Case Filing (ECF) system for the Northern District of California. The clerk also shall
2 serve by mail a copy of this order on the petitioner.

3 4. The respondent must file and serve upon the petitioner, on or before **September 4, 2020**,
4 an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases,
5 showing cause why a writ of habeas corpus should not be issued. The respondent must file with
6 the answer a copy of all portions of the court proceedings that have been previously transcribed
7 and that are relevant to a determination of the issues presented by the petitioner.

8 5. If the petitioner wishes to respond to the answer, he must do so by filing a traverse with the
9 court and serving it on the respondent on or before **October 2, 2020**.

10 6. The petitioner is responsible for prosecuting this case. The petitioner must promptly keep
11 the court informed of any change of address and must comply with the court's orders in a timely
12 fashion. The petitioner is cautioned that he must include the case name and case number for this
13 case on the first page of any document he submits to the court for consideration in this case.

14 **IT IS SO ORDERED.**

15 Dated: June 10, 2020



16
17 LAUREL BEELER
18 United States Magistrate Judge
19
20
21
22
23
24
25
26
27
28